

Rule 20. Mentally Ill or Cognitively Impaired Defendants**Rule 20.01 Competency Proceedings**

Subd. 1. Waiver of Counsel in Competency Proceedings. A defendant must not be allowed to waive counsel if the defendant lacks ability to:

- (a) knowingly, voluntarily, and intelligently waive the right to counsel;
- (b) appreciate the consequences of proceeding without counsel;
- (c) comprehend the nature of the charge;
- (d) comprehend the nature of the proceedings;
- (e) comprehend the possible punishment; or

(f) comprehend any other matters essential to understanding the case. The court must not proceed under this rule before a lawyer consults with the defendant and has an opportunity to be heard.

Subd. 2. Competency to Participate in the Proceedings. A defendant is incompetent and must not plead, be tried, or be sentenced if the defendant due to mental illness or cognitive impairment lacks ability to:

- (a) rationally consult with counsel; or
- (b) understand the proceedings or participate in the defense.

Subd. 3. Competency Motion. If the prosecutor, defense counsel, or the court, at any time, doubts the defendant's competency, the prosecutor or defense counsel must make a motion challenging competency, or the court on its initiative must raise the issue. The defendant's consent is not required. The motion must provide supporting facts, but must not include communications between the defendant and defense counsel if disclosure would violate the attorney-client privilege. By bringing the motion, defense counsel does not waive the attorney-client privilege. If the court determines that reason exists to doubt the defendant's competency, the court must suspend the criminal proceedings and proceed as follows.

- (a) In misdemeanor cases, the court must:
 - (1) proceed under this rule as in felony or gross misdemeanor cases;
 - (2) begin civil commitment proceedings under Rule 20.01, subdivision 6; or
 - (3) dismiss the case, unless dismissal would be contrary to the public interest.

(b) In felony or gross misdemeanor cases, the court must, on motion, determine probable cause. If probable cause exists, the court must order an examination of the defendant's mental condition and set a Rule 20 hearing to occur no later than 60 days from the date of the court's order. If no probable cause exists, the charges must be dismissed.

(c) While suspended, the court retains authority over the criminal case, including, but not limited to, bail and conditions of release.

Subd. 4. Examination and Report.

(a) Medical Examination. The court must appoint at least one examiner as defined in Minnesota Statutes, chapter 253B, or successor statute, to examine the defendant and report to the court on the defendant's mental condition.

If the defendant is entitled to release, and the examination can be done on an outpatient basis, the court cannot order the defendant to be confined for the examination. The court may make appearance for the examination a condition of release. If the defendant is not entitled to release or the examination cannot be done on an outpatient basis, the court may order the defendant confined in a state hospital or other suitable facility for up to 60 days to complete the examination.

If the prosecutor or defense counsel has a qualified examiner, the court, on request, must allow the examiner to observe the examination and examine the defendant. Any examiner may obtain and review the report of any prior examination under this rule.

The court must order that if any examiner appointed to examine the defendant concludes that the defendant presents an imminent risk of serious danger to another, is imminently suicidal, or otherwise needs emergency intervention, the examiner must promptly notify the prosecutor, defense counsel, and the court.

(b) Report of Examination. The court-appointed examiner must forward a written report to the court within 60 days from the order for examination, or earlier if directed by the court. The court must promptly provide a copy of the report to the prosecutor and defense counsel. The report must not be otherwise disclosed until the competency hearing. The report must include:

(1) A diagnosis of the defendant's mental condition.

(2) If the defendant is mentally ill or cognitively impaired, an opinion as to:

(a) the defendant's capacity to understand the proceedings or participate in the defense;

(b) whether the defendant presents an imminent risk of serious danger to another, is imminently suicidal, or otherwise needs emergency intervention;

(c) any treatment required for the defendant to attain or maintain competence and an explanation of appropriate treatment alternatives by order of preference, including the extent to which the defendant can be treated without commitment to an institution and the reasons for rejecting such treatment if institutionalization is recommended;

(d) whether a substantial probability exists that the defendant will ever attain competency to proceed;

(e) the estimated time required to attain competency to proceed; and

(f) the availability of acceptable treatment programs in the geographic area including the provider and type of treatment.

(3) The factual basis for the diagnosis and opinions.

(4) If the examination could not be conducted because of the defendant's unwillingness to participate, an opinion, if possible, as to whether the unwillingness resulted from mental illness or cognitive impairment.

Subd. 5. Competency Determination.

(a) Competency Hearing Procedures.

(1) The court must hold a contested hearing if a party files written objections to the competency report within ten (10) days after receipt.

(2) Hearing Process. The party that requested the competency hearing must present evidence first. If the court requested the competency report, the prosecutor must present evidence first unless the court otherwise orders.

(3) Evidence. Evidence of the defendant's mental condition may be admitted, including the court-appointed examiner's report. The court-appointed examiner or any person designated by the examiner as a source of information for preparation of the report other than the defendant or defense counsel, is considered the court's witness and may be called and cross-examined by any party.

(4) Defense Counsel as Witness. Defense counsel may testify, subject to the prosecutor's cross-examination, but must not violate the attorney-client privilege. Testifying does not automatically disqualify defense counsel from continuing to represent the defendant. The court may inquire of defense counsel regarding the attorney-client relationship and the defendant's ability to communicate with counsel. The court must not require counsel to divulge communications protected by the attorney-client privilege, and the prosecutor cannot cross-examine defense counsel concerning responses to the court's inquiry.

(b) Determination Without Hearing. If no party timely filed objections and the court did not hold a competency hearing, the court may determine the defendant's competency on the examiner's report.

(c) Burden of Proof and Decision. If the court finds by the greater weight of the evidence that the defendant is competent, it must enter an order finding the defendant competent. Otherwise, the court must enter an order finding the defendant incompetent.

Subd. 6. Procedure After Competency Proceedings.

(a) Finding of Competency. If the court finds the defendant competent, the criminal proceedings must resume.

(b) Finding of Incompetency. If the court finds the defendant incompetent, and the charge is a misdemeanor, the charge must be dismissed. If the court finds the defendant incompetent, and the charge is a felony or gross misdemeanor, the proceedings must be suspended except as provided in Rule 20.01, subd. 8.

If the defendant is not under civil commitment, the court must issue an order directing the designated agency in the county where the criminal case is filed to conduct prepetition screening pursuant to the Minnesota Commitment and Treatment Act to make a recommendation on whether the defendant should be civilly committed under the Act. The prepetition screening team must prepare and send a written report to the county attorney and social services agency for that county within five days. The county attorney must determine whether a commitment petition should be filed and may file the petition in the district court on behalf of the county attorney, the designated agency, or another interested person. By agreement between county attorneys, the prepetition screening and county attorney's functions described in this paragraph may be handled in the county of financial responsibility or the county where the defendant is present. The court must set timely review hearings and supervise the commitment as provided in Rule 20.01, subd. 7.

Subd. 7. Continuing Supervision. The head of the institution to which the defendant is committed, or if the defendant is not committed to an institution, the person charged with the defendant's supervision, must report to the court periodically, not less than once every six months,

on the defendant's mental condition with an opinion as to competency to proceed. The court may order a different period. Reports must be furnished to the prosecutor and defense counsel.

The prosecutor, defense counsel, the defendant, or the person charged with the defendant's supervision may apply to the court for a hearing to review the defendant's competency. All parties are entitled to notice before the hearing. If the court finds the defendant competent to proceed, the criminal proceedings must resume. The court and the prosecutor must be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The prosecutor has the right to participate as a party in any proceedings concerning proposed changes in the defendant's civil commitment or status.

Subd. 8. Dismissal of Criminal Charge.

(1) Felonies. Except when the defendant is charged with murder, the criminal charges must be dismissed three years after the date of finding the defendant incompetent to proceed unless the prosecutor, before the expiration of the three-year period, files a written notice of intent to prosecute when the defendant regains competency.

(2) Gross Misdemeanors. The criminal charges must be dismissed 30 days after the date of finding the defendant incompetent to proceed unless before that date the prosecutor files a written notice of intent to prosecute when the defendant regains competency. If a notice has been filed, the charges must be dismissed when the defendant would be entitled under these rules to custody credit of at least one year if convicted.

Subd. 9. Issues Not Requiring Defendant's Participation. The defendant's incompetence does not preclude defense counsel from making an objection or defense before trial that can be fairly determined without the defendant's participation.

Subd. 10. Admissibility of Defendant's Statements. When a defendant is examined under this rule, any statement made by the defendant for the purpose of the examination and any evidence derived from the examination is admissible at the competency proceeding.

Subd. 11. Credit for Confinement. If the defendant is convicted, any time spent confined to a hospital or other facility for a mental examination under this rule must be credited as time served.

(Amended effective July 1, 2015; amended effective September 1, 2018.)

Rule 20.02 Defense of Mental Illness or Cognitive Impairment - Mental Examination

Subd. 1. Authority to Order Examination. The trial court may order the defendant's mental examination if:

(a) the defense notifies the prosecutor of its intent to assert a mental illness or cognitive impairment defense pursuant to Rule 9.02, subd. 1(5);

(b) the defendant in a misdemeanor case pleads not guilty by reason of mental illness or cognitive impairment; or

(c) the defendant offers evidence of mental illness or cognitive impairment at trial.

Subd. 2. Defendant's Examination. If the court orders a mental examination of the defendant, it must appoint at least one examiner as defined in Minnesota Statutes, chapter 253B, or successor statute, to examine the defendant and report to the court on the defendant's mental condition. The court may order the defendant to be confined to a hospital or other facility for up to 60 days to

complete the examination if special need is shown. If any party has retained an examiner, the examiner must be permitted to observe the mental examination and examine the defendant.

Subd. 3. Defendant's Refusal to be Examined. If the defendant does not participate in the examination and thereby prevents the examiner from making an adequate report to the court, the court may:

- (a) prohibit the defendant from introducing evidence of the defendant's mental condition;
- (b) strike any previously introduced evidence of the defendant's mental condition;
- (c) permit any party to introduce evidence of the defendant's refusal to cooperate and to comment on it to the trier of fact;
- (d) make any other ruling as it deems just.

Subd. 4. Report of Examination. The examiner must forward a written examination report to the court. The court must provide copies of the report to the prosecutor and defense. The contents of the report must not otherwise be disclosed except as provided in this rule. The report must contain:

- (a) A diagnosis of the defendant's mental condition as requested by the court;
- (b) If directed by the court, an opinion as to whether, because of mental illness or cognitive impairment, the defendant, at the time of committing the alleged criminal act, was laboring under such a defect of reason as not to know the nature of the act or that it was wrong;
- (c) Any opinion requested by the court that is based on the examiner's diagnosis;
- (d) A statement of the factual basis on which the diagnosis and any opinion are based; and
- (e) If the examination could not be conducted because of the defendant's unwillingness to participate, an opinion, if possible, as to whether the defendant's unwillingness resulted from mental illness or cognitive impairment.

Subd. 5. Admissibility of Examination. Evidence derived from the examination is not admissible against the defendant unless the defendant has previously made his or her mental condition an issue in the case. If the defendant's mental condition is an issue, any party may call the court-appointed examiner to testify as a witness at trial, and the examiner is subject to cross-examination by any other party. The report or portions of it may be received in evidence to impeach the examiner.

Subd. 6. Admissibility of Defendant's Statements. When a defendant is examined under Rule 20.01, Rule 20.02, or both, the admissibility at trial of any statements the defendant made for the purpose of the examination and any evidence derived from the statements must be determined by the following rules.

(1) **Sole Defense of Mental Condition.** If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of intent to rely solely on the defense of mental illness or cognitive impairment, or if the defendant in a misdemeanor case relies solely on the plea of not guilty by reason of mental illness or cognitive impairment under Rule 14.01(c), statements the defendant made for the purpose of the mental examination and evidence derived from the statements are admissible at the trial on the issue of the defendant's mental condition.

(2) **Multiple Defenses.** If a defendant relies on the defense of mental illness or cognitive impairment together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or cognitive impairment, the statements

the defendant made for the purpose of the mental examination and any evidence derived from the statements are admissible against the defendant only at the mental illness or cognitive impairment stage of the trial.

Subd. 7. Trial Procedure for Multiple Defenses.

(a) Order of Proof. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of intent to rely on the defense of mental illness or cognitive impairment together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or cognitive impairment, the court must separate the two defenses. The defense of not guilty must be heard and determined first. The defense of mental illness or cognitive impairment must be heard and determined second.

(b) Jury Instructions. The jury must be informed at the start of the trial that:

- (1) the defendant has offered two defenses;
- (2) the defense of not guilty will be tried first and the defense of mental illness or cognitive impairment will be tried second;
- (3) if the jury finds that the elements of the offense have not been proved, the defendant will be acquitted;
- (4) if the jury finds the elements of the offense have been proved then the defense of mental illness or cognitive impairment will be tried and determined by the jury.

(c) Proof of Elements - Effect. The court or jury must determine whether the elements of the offense have been proved beyond a reasonable doubt. If the elements of the offense have not been proved, a judgment of acquittal must be entered.

If the defendant has been convicted in the guilt phase, then the defense of mental illness or cognitive impairment must be tried. The jury must render a verdict or the court make a finding of:

- (1) not guilty by reason of mental illness;
- (2) not guilty by reason of cognitive impairment; or
- (3) guilty.

The defendant bears the burden of proving mental illness or cognitive impairment by a preponderance of the evidence.

Subd. 8. Effect of Not Guilty by Reason of Mental Illness or Cognitive Impairment.

(1) Mental Illness or Cognitive Impairment. When a defendant is found not guilty by reason of mental illness or cognitive impairment, and the defendant is under civil commitment as mentally ill or developmentally disabled, the court must order the commitment to continue. If the defendant is not under commitment, a petition for commitment must be filed by the county attorney in the county in which the acquittal took place. The court must order the defendant to be detained in a state hospital or other facility pending completion of the proceedings. In felony and gross misdemeanor cases, the court must supervise the commitment as provided in Rule 20.02, subd. 8(4).

(2) Continuing Supervision. In felony and gross misdemeanor cases, the court and the prosecutor must be notified of any proposed institutional transfer, partial hospitalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The

prosecutor has the right to participate as a party in any proceedings concerning proposed changes in the defendant's civil commitment or status.

(Amended effective September 1, 2018.)

Rule 20.03 Disclosure of Reports and Records of Defendant's Mental Examinations

Subd. 1. Disclosure Order. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of an intent to rely on the defense of mental illness or cognitive impairment, the court, on the prosecutor's motion with notice to defense counsel, may order the defendant to furnish to the court for in camera review or to the prosecutor copies of all medical reports and records previously or subsequently made concerning the defendant's mental condition that are relevant to the mental illness or cognitive impairment defense. The court must inspect any reports and records furnished to it, and if the court finds them relevant, order them disclosed to the prosecutor. Otherwise, they must be returned to the defendant.

A subpoena duces tecum may be issued under Rule 22 if the defendant cannot comply with the court's disclosure order.

Subd. 2. Use of Reports and Records. Reports and records furnished to the prosecutor under Rule 20.03, subd. 1, and any evidence obtained from them, may be admitted in evidence only on the defense of mental illness or cognitive impairment when it is the sole defense, or during the mental illness or cognitive impairment phase when there are multiple defenses, as specified by Rule 20.02, subd. 7.

(Amended effective July 1, 2015; amended effective September 1, 2018.)

Rule 20.04 Simultaneous Examinations

The court may order a civil commitment examination under Minnesota Statutes, chapter 253B, or successor statute, a competency examination under Rule 20.01, and an examination under Rule 20.02 to all be conducted simultaneously.

Comment - Rule 20

Rule 20.01, subd. 4(a), provides that the examiners may obtain and review any reports of prior examinations conducted under the rule. This includes prior reports conducted under both Rules 20.01 and 20.02. This express authorization, which was adopted in 2005, is intended merely to clarify the rule and not to change it.

No limitation exists for the time or number of hearings that may be held under Rule 20.01 to determine the defendant's competency.

The definitions of mental illness and mental deficiency contained in Minnesota Statutes, section 611.026, and its judicial interpretations are not affected by these rules.

Rule 20.02, subd. 2, providing for the examination on a defense of mental illness or deficiency, is the same as Rule 20.01, subd. 4(a), governing the examination for competency to proceed.

Rule 20.02, subd. 8, addresses the constitutional requirements of equal protection and due process. No continuing supervision by the trial court exists in misdemeanor cases.

The prosecutor has the right to participate as a party in any civil proceedings being conducted under Minnesota Statutes, chapter 253B. The prosecutor could question and present witnesses and argue for the continued commitment of the defendant in the civil proceedings.

If the court order simultaneous examinations under Rule 20.04, the examiner appointed must be qualified to provide a report for all necessary purposes.